

RESTORATIVE JUSTICE AS AN EFFORT TO RESOLVE EXCISE CRIMES AGAINST CIGARETTES

Rinaldy Amrullah*, Diah Gustiniati, Tri Andrisman

Universitas Lampung

Jl. Prof. Dr. Sumantri Brojonegoro No. 1 Bandar Lampung, Lampung, Indonesia

*email: rinaldy.amrullah@fh.unila.ac.id

DOI: 10.30631/alrisalah.v22i2.1249

Submitted: August 29, 2022; Revised: December 22, 2022; Accepted: December 23, 2022

Abstract: Many crime cases in Indonesian society are settled in courts, resulting in a buildup that can hinder the justice system. Meanwhile, none of the cases concerning excisable goods or cigarettes in the Free Trade Zone, which are handled by Customs and Excise in several areas, have reached the judicial process. This problem can be resolved using the restorative justice mechanism, which prioritizes the concepts of peace, mediation and reconciliation, where perpetrators, victims, law enforcement officials, and the community participate directly in the settlement of criminal cases. Therefore, the formulation of the problem in this research involved the legal position of restorative justice and its application in excise crimes. Normative juridical legal methods, supported by empirical juridical data, were used in this research. The results showed that customs and excise violations can be resolved using restorative justice without the need for a court process.

Keywords: Customs, Excise, Restorative justice

Abstrak: Banyak kasus kejahatan dalam masyarakat Indonesia yang diselesaikan di pengadilan sehingga terjadi penumpukan yang dapat menghambat sistem peradilan. Sementara itu, kasus barang kena cukai atau rokok di Kawasan Perdagangan Bebas (*Free Trade Zone*) yang ditangani Bea dan Cukai di beberapa daerah belum ada yang sampai ke proses peradilan. Masalah ini dapat diselesaikan dengan mekanisme *restorative justice* yang mengedepankan konsep perdamaian, mediasi dan rekonsiliasi, dimana pelaku, korban, aparat penegak hukum, dan masyarakat berpartisipasi langsung dalam penyelesaian perkara pidana. Oleh karena itu, rumusan masalah dalam penelitian ini menyangkut kedudukan hukum restorative justice dan penerapannya dalam tindak pidana cukai. Metode hukum yuridis normatif yang didukung data yuridis empiris digunakan dalam penelitian ini. Hasil penelitian ini menunjukkan bahwa pelanggaran kepabeanan dan cukai dapat diselesaikan dengan menggunakan restorative justice tanpa perlu melalui proses pengadilan.

Kata Kunci: Kepabeanan, Cukai, *Restorative justice*

Introduction

Indonesian society is a domain for many crimes, particularly in this modern era. This occasionally leads to the judicial process, where people tend to use courts in settling a case with the thought of obtaining justice. However, this is fairly difficult to achieve because the verdicts of the judiciary usually involve win-lose solutions, which often create feelings of unhappiness, disappointment, grudges, dissatisfaction, and even worse, the intent to revenge.

These negative feelings experienced by the losing parties result in attempts to seek justice at further judiciary levels, such as the High Court, the Supreme Court, and even the Constitutional Court. Consequently, a backlog of court cases will be created, thereby damaging the justice system. As stated by Joni Emirzon in his book entitled "Alternative Dispute Resolution outside the Court," this can generally be categorized as one of the unavoidable weaknesses of litigation institutions, though it has become a provision.¹

This phenomenon also affects Indonesia, where Satjipto Rahardjo found that the settlement of cases through the justice system and the attainment of a court decision are slow for law enforcement. This is because law enforcement extends through various levels, such as the Police, the Attorney General's Office, the District Court, the High Court, and even the Supreme Court, which leads to an accumulation of cases.² As a result, the criminal justice system becomes substandard. The decision obtained through formal channels also fails to necessarily reflect a sense of justice because it is expensive, prolonged, and tiring. Additionally, it is unsuccessful at resolving problems and is full of corrupt practices, collusion, and nepotism.

These negative acts lead to the designation of Indonesian law as lacking the spirit of justice³ because it fails to offer comprehensive and effective solutions.

In Indonesia, Free Trade Zones and Free Ports are only granted to four areas, namely the Nanggroe Aceh Darussalam Province to the Sabang region and three more in the Kepulauan Riau Province, namely Batam, Bintan, and Karimun. The boundaries of the Free Trade Zone and Free Harbor of the Riau Archipelago are contained in Government Regulation Numbers 46, 47, and 48 of 2007.⁴ This is based on previous research by Humayni Fadli entitled "Penal Mediation in the Settlement of Criminal Cases for the Possession of Cigarettes without Excise," where the focus was on solving cigarette excise crimes through penal mediation. However, this present research explored the resolution of cigarette excise crimes through restorative justice.

The main problem with the implementation of restorative justice is that the approach prioritizes the concepts of peace, mediation and reconciliation in which perpetrators, victims, law enforcement officials, and the community participate in the settlement of criminal cases. This is contrary to the traditional criminal justice system, which is rigid, too formalistic, and more concerned with legal certainty than justice in society.

Based on the problems above, the background of this research focuses on achieving justice through the settlement of a criminal

¹ Joni Emirzon, *Alternatif Penyelesaian Sengketa di Luar Pengadilan*, Jakarta, PT Gramedia Pustaka Utama, 2001, . 3-5.

² Satjipto Rahardjo, *Sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta, 2003, 170

³ Gordon Bazemore and Mara Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*, Willan Publishing, Oregon, 2005, .5. Also quoted by Dewi DS and A. Gratitude Fatahilah, *Mediation Penalty: Application Restorative Justice in Court Child Indonesia*, Depok, Indie Publishing, 2011, page 4

⁴ Interview with Jatmiko, Counseling and Information Service Section of the Customs and Excise Supervision and Service Office (KPPBC) Type Middle Customs B Tanjungpinang City, Tuesday, September 15, 2015.

case. The current traditional criminal justice system generally views crime as a violation of the state, which is defined as breaking the law and being guilty. Consequently, this rigidity fails to provide freedom to victims and defendants in settling their cases.⁵

Result and Discussion

1. Legal Basis for the Implementation of Restorative Justice

Restorative justice is a new response commonly heard in criminal law enforcement.⁶ It is the restoration of a relationship and the payment of mistakes by a perpetrator to the victim of a crime that is conducted outside the court in order to avoid legal problems. This indicates that crimes can be resolved optimally to reach an agreement between the concerned parties.⁷ Restorative justice is a process to involve, as far as possible, those who participated in certain violations and collectively identify and address issues, needs, and obligations to remedy and restore the situation in the best possible way.⁸

In Indonesia, the criminal justice system is "retributive," which is contrary to "restorative" justice, where all parties involved in a

crime collaborate to resolve and manage future consequences. It can be defined as a model for solving criminal cases that prioritizes recovery for victims, perpetrators, and society. The main principle is the participation of the concerned parties as well as citizens, who act as facilitators in resolving cases, to ensure the victims or perpetrators will no longer disturb the harmony created in society.⁹

The implementation of the principles of restorative justice depends on the legal system adopted by a country. The concept cannot be forced on an uninterested legal system. Generally, restorative justice is a valuable tool for managing and handling conflict in our everyday environment. This ultimately suggests improving lives through goals considered social innovation.¹⁰ The principle of restorative justice is an option in designing a country's legal system. Regardless, the lack of adherence to this model does not prevent the possibility of applying its principles to provide justice, certainty, and legal benefits in a country. In Indonesia, Law Number 8 of 1981 concerning the Criminal Procedure Code, law enforcement refers to the implementation of formal law.¹¹

However, the concept of restorative justice focuses more on creating justice and balance for the perpetrators of criminal acts and their victims. It transforms procedural and criminal justice mechanisms that focus on sentencing into dialogue and mediation processes to create agreements on settlements that are more just and balanced for the vic-

⁵ Eva Achjani Zulfa, <http://evacentre.blogspot.com/2009/11/restorativejustice.html>. "Restorative Justice: Alternatife Hukum". last accessed on Monday, 09 September 2013 at 12.33

⁶ Suzuki, Masahiro, and Xiaoyu Yuan. "How Does Restorative Justice Work? A Qualitative Metasynthesis." *Criminal Justice and Behavior* 48, no. 10 (2021): 1347-65. <https://doi.org/10.1177/0093854821994622>.

⁷ Hanafi Arief and Ningrum Ambarsari, 'Application of Restorative Justice Principles in the Criminal Justice System in Indonesia', *Al-Adl: Jurnal Hukum*, 10.2 (2018), 173 <<https://doi.org/10.31602/al-adl.v10i2.1362>>.

⁸ Effendy, Samuel Dwioktorianto. "Why Christian Schools Should Adopt Restorative Justice?" *Diligentia: Journal of Theology and Christian Education* 2, no. 1 (2020): 31. <https://doi.org/10.19166/dil.v2i1.2121>.

⁹ Apong Herlina et al., *Protection of Children in Conflict with the Law*, PT. Raja Grafindo Persada, Jakarta, 2004

¹⁰ E Kazić, R Ćorović, "Restorative Justice Within Legal System of Bosnia and Herzegovina", *padovauniversitypres.it UPADO* 2019

¹¹ Adam Prima Mahendra, 'Penal Mediation at the Investigation Stage Based on Restorative Justice', *Jurist-Diction*, 3.4 (2020), 1153 <<https://doi.org/10.20473/jd.v3i4.20200>>.

tims and perpetrators. Hence, restorative justice is a judicial approach that focuses on the needs of victims, violators, and the community, without complying with statutory provisions or imposing punishment. The perpetrator is encouraged to take responsibility for their actions by correcting mistakes through apologies, the return of stolen property, or community service.

Restorative justice aims at empowering victims, perpetrators, families, and communities to correct unlawful acts using awareness to avoid future crimes and improve lives. It is a simple theory of justice that emphasizes the recovery of losses caused by criminal acts.

The approach focuses on the needs of victims and perpetrators and helps criminals avoid crimes in the future. This is based on the theory of justice, which considers crimes and violations to be committed against individuals or society and not the state. Consequently, restorative justice encourages dialogue between victims and perpetrators, producing the highest level of victim satisfaction and perpetrator accountability.

According to Setyo Utomo, another peculiar feature is the placement of crime as a symptom of social action and not just a violation of criminal law. Crime is considered an act that damages people and destroys social relationships. This contrasts with criminal law, which regards crime as a state problem, where only the state and occasionally, indigenous peoples, have the right to punish or impose sanctions. Meanwhile, penal mediation has gained international recognition, particularly from several conferences. For example, the discussion on criminal justice management (document A/CONF 169/6) in the 9th UN Congress in 1995 suggested that all countries should consider "privatizing some law enforcement and justice functions." Alternative Dispute Resolution (ADR) was also proposed as a form of mediation, conciliation, restitution, and compensation in the

criminal justice system. This was aimed at ensuring procedural and criminal justice mechanisms that focus on sentencing are transformed into dialogue and mediation processes to create agreements. Therefore, the settlement of criminal cases that are more just and balanced for victims and perpetrators will be created.¹²

Another significant discussion was the 1999 International Penal Reform Conference. One of the key elements of the new agenda for criminal law penal reform mentioned was the need to enrich the formal justice system with an informal, locally based dispute resolution mechanism with human rights standards. Nine development strategies were identified in reforming criminal law, namely restorative justice, alternative dispute resolution, informal justice, alternatives to custody, alternative ways of dealing with juveniles, handling violent crime, reducing the prison population, the proper management of prisons, and the role of civility in penal reform.

The aim of restorative justice is to reconcile victims, perpetrators, related families, and society to promote recovery from a crime with full awareness and belief as the basis for a peaceful social life. This concept emphasizes the return of losses as a result of a crime to its original state. Restorative justice also assists violators to avoid other criminal acts. It is a theory of justice that emphasizes the recovery of losses caused by criminal acts.¹³

The concept views the handling of crimes as the responsibility of the state and society and aims to restore the situation to its original state prior to the crime. Changes occur

¹² Azad Rachmat Hambali, 'Law Enforcement Through a Restorative Justice Approach to Criminal Case Resolution,' *Kalabbirang Law Journal*, 2.1 (2020), 69-77 <<https://doi.org/10.35877/454ri.kalabbirang36>>.

¹³ Henny Saida Flora, 'UBELAJ, Volume 3 Number 2, October 2018 | 142', 3.2 (2018), 142-58.

after the law is broken, thereby necessitating the protection of the rights of every crime victim.¹⁴ Therefore, the concept of restorative justice is built on the understanding that the losses suffered by the victims and those borne by the community should be recovered. The involvement of community members is needed to correct mistakes and irregularities that occur in the environment concerned. Also, appreciation and respect should be accorded to the victim by requiring the perpetrator to redeem the losses or face the consequences of the crime committed.

The recovery process implemented by the perpetrators may involve compensation, social work, repairs, or certain activities according to a joint decision by all parties concerned. The shift from the traditional punishment model to an approach that provides justice, particularly social justice, is the starting point or basis for restorative justice in any country.

The position of restorative justice in Indonesia is regulated explicitly and openly by various laws and regulations. These include Law Number 48 of 2009 concerning Judicial Power and Law Number 14 of 1985 as amended in Law Number 5 of 2004 as last amended by Law Number 3 of 2009 concerning the Supreme Court. As a state institution that exercises the highest level of judicial power, the adoption of the restorative justice concept is a positive development.

Meanwhile, this concept is not only applicable to the Supreme Court but can be adapted to the criminal justice process, particularly in Indonesia. Several processes experienced by justice seekers can be dismissed, such as investigation, prosecution,

examination, and the judge's decision or sentencing, which require legal efforts or remedies. Therefore, the application of the restorative justice concept should be performed at the various levels or judicial processes as stated above.

2. Restorative Justice Application in Excise Crime

Excise criminal acts are described in Law Number 11 of 1995 in conjunction with Law Number 39 of 2007. These laws place more emphasis on the consequences of losses suffered by the state, namely the absence of tax revenue or collection of excise levies, which should be the right of the state.¹⁵ The district court is responsible for deciding on criminal sanctions, as contained in articles 50, 52, 53, 54, 55, 56, 57, 58, 58A, 51, and 61 of Law Number 11 of 1995 in conjunction with Law Number 39 of 2007. The types of punishments mentioned in these laws include imprisonment and/or fines. Unpaid fines may lead to a deduction from the wealth and/or income of the concerned party. The inability to achieve reimbursement may subsequently lead to a maximum imprisonment of 6 months.

Excise is a country's most important income because the revenues generated are quite high. It is a very significant state capitalization income and contributes about 10-12% of the State Revenue and Expenditure Budget (APBN). As a result, income from excise is always prioritized.

Meanwhile, the most relevant agency governing crimes committed at borders is the Border Guard. It is empowered to perform duties concerning the investigation, prevention, detection, and prosecution of perpetrators of excise crimes. Within its jurisdiction, Border Guards may apply offen-

¹⁴ Sapto Budoyo and Ratna Kumala Sari, 'The Existence of Restorative Justice as the Purpose of Implementing Diversion in the Juvenile Justice System in Indonesia', *Meta Juridical Journal*, 2.1 (2019), 79-90 <<https://doi.org/10.26877/my.v2i2.4689>>.

¹⁵ Septian Yudiantara. et al Putra, 'Penegakan Hukum Atas Tindak Pidana Cukai Rokok Menurut Undang-Undang Nomor 39 Tahun 2007', 11, 2017.

sive operational methods to combat cross-border crime.¹⁶

The Big Indonesian Dictionary (KBBI) defines excise as a state levy that applies to certain goods whose consumers and journeys should be monitored. Due to the potential negative impacts of such products on the community or in their utilization, the imposition of levies is necessary to ensure justice and balance.¹⁷

Article 1 number 1 of Law Number 39 of 2007 concerning Excise reads, "Excise is a state levy imposed on any goods that have the nature or characteristics specified in this law." In Indonesia, the implementation of customs clearance is the full responsibility of the Directorate General of Customs and Excise, which is part of the World Customs Organization. The Customs Agency of the Directorate General obtains fewer benefits than are expected from its performance. The main uses and obligations of this department have been stipulated in Law Number 17 of 2006 concerning Customs, as follows:

- a. Provide a new policy formulation of the main technical tasks in the field of customs and excise that are in accordance with the regulations stipulated in the applicable law.
- b. Propose, implement, supervise, monitor, and provide technical operational security for government policies related to the flow of goods entering or leaving the customs area based on applicable laws and regulations.
- c. Proposing, assigning, and monitoring in

the field of service provision, licensing, facilitating management, and supervision in the field of customs and excise based on applicable laws.

- d. Prevent violations of customs and excise laws and regulations and investigate customs and excise criminal acts in accordance with the law.

The most important task of the Directorate General of Customs and Excise is to implement some duties in the field of customs based on the policies of the Finance Ministry. It should also obey government policies relating to the traffic of goods entering or leaving a place or customs area¹⁸ and connect with other countries based on the law and provisions of applicable regulations. This implies that the department must collaborate with other officials while performing its duties.¹⁹

Customs and Excise officers should have the right instructions to execute penalties. They should also continue to improve good service and provide certainty for voters of objects and subjects that will be punished.²⁰

The application of the excise material law experiences several obstacles in certain areas in the Indonesian territory, which are adjacent to the Free Trade Zone and legally separated from the customs area. The separation has implications for luxury and other goods that are free from the imposition of import

¹⁶ Woźniak, Zenon, Mariusz Kuliński, and Wojciech Jakubiec. "The Role of the Border Guard in Combating Economic Crime." *Scientific Journal of Bielsko-Biala School of Finance and Law* 26.2 (2022):44-48.

<https://doi.org/10.19192/wsfig.sj2.2022.7>

¹⁷ SU S Analysis, A., Pid, N., & Pn, 'Juridical View of The Implementation Of Sanction Against Illicit Cigarette Trade.', 14(3).3 (2022), 413-431 <<https://doi.org/10.29123/jy.v14i3.477>>.

¹⁸ PRADIPTA, Dhea Junesty; PRADNYANA, I. Nyoman Prama; RAHARJO, Teguh. The New Normal Strategy for Project Management in Directorate General of Customs and Excise. In: *2020 3rd International Conference on Computer and Informatics Engineering (IC2IE)*. IEEE, 2020. p. 249-254. [10.1109/IC2IE50715.2020.9274568](https://doi.org/10.1109/IC2IE50715.2020.9274568)

¹⁹ Irwandi Syahputra and others, 'Law Enforcement of the Crime of Excise at the Border of the Bintan Free Trade Area and Port,' *Selat Journal*, 8.1 (2020), 89-107 <<https://doi.org/10.31629/selat.v8i1.2747>>.

²⁰ Eddi Wibowo, et al, *Law and Public Policy*, Indonesian Public Administration Reform Foundation, Yogyakarta, 2004, p. 8

duties, value-added tax, and sales tax. Excise goods, particularly cigarettes, can easily enter areas that are not their designation. Generally, there are two law enforcement efforts contained in the criminal act of selling excisable goods:²¹

First, penal efforts involve all actions taken by law enforcement officials. It is more focused on eradicating the occurrence of criminal law violations through sanctions that threaten the perpetrators. Preliminary and further investigations, prosecution, and other activities are parts of the process. The functionalization of penal punishment is an effort to overcome crime through rational enforcement of criminal law to fulfill a sense of justice and effectiveness.

The criminal acts of selling excisable goods are punished using legal sanctions or penal means. Hence, criminal law or penal efforts are part of the policy measure in regulating society.

According to Article 1 number 1 of Law No. 11 of 1995, Jo. Law No. 39 of 2007, excise is a state levy imposed on certain goods with the properties or characteristics stipulated in this law. The function of excise is revenue collection, as part of fiscal law, from state revenue or central tax. This function is explained below:

- a. General Elucidation number 4 letter (f) of Law No. 11 of 1995 Jo. Law No. 39 of 2007 indicates that the material of this law aims to foster, regulate, and pay attention to the principle of state revenue interests. This signifies that the flexibility of the provisions in this law can guarantee an increase

in state revenue. Hence, the need to increase national development financing can be anticipated.

- b. General Elucidation number 2 describes excise as a state levy imposed on certain goods with properties or characteristics appropriate to this law. This revenue is aimed to realize welfare, justice, and economic balance.
- c. General Elucidation number 3 focuses on optimizing the efforts of state revenue from the excise sector and confirming the limitations of objects in the category.
- d. Article 3 paragraph (1) of Law No. 11 of 1995 Jo. Law No. 39 of 2007, where the imposition of excise tax comes into force for Excisable Goods made in Indonesia or imported into the customs area appropriate to the provisions of the customs law. Affirming the excise imposition time on an item designated as Excisable is important. This is because an excise debt juridically arises from that moment. Therefore, goods must be supervised because the state's rights have been attached.
- e. Article 5 paragraph (3) second line of Law No. 11 of 1995 Jo. Law No. 39 of 2007 discusses the objectives of the change in the tariff system, including benefit to state revenue, limiting consumption, and facilitating the collection or supervision of Excisable Goods.

Second, restorative justice efforts that were implemented following the termination of prosecution by the Attorney General's Office. Based on the Regulation of the Indonesia Attorney General's Office Number 15 of 2020, cases with certain conditions are terminated following an out-of-court settlement using a restorative justice approach. Before submitting the case file to court, the prosecutor seeks peace between the suspect and victim. The discontinuation of prosecution due to restorative justice denotes setting aside

²¹ Cristina Natalia Rahmawati, 'The Criminal Act of Selling Cigarettes Without Attaching Excise Tape (A Research in the Legal Territory of the Sigli District Court) Criminal Action of Sales Cigarettes Without Attaching Excise Tape (A Research in The Jurisdiction of the Sigli State Court) Introduction,' 5.2 (2021), 343–51.

cases in the public interest (seponering).²²

In the Indonesian judiciary, law enforcement officials have begun to implement restorative justice on a limited basis. Following the National Police Chief Circular Letter No. 8/2018, the National Police applies the principle of Restorative Justice in resolving cases that do not cause public unrest, rejection, or lead to social conflict. The principle is realized through a peace agreement and revocation of the victim's right to prosecute. Investigation can be halted after receiving a request for reconciliation or peace from the complainant or victim and the reported party or perpetrator. Subsequently, the investigator issues a letter to terminate the investigation.²³

Based on the Decree of the Director General of Badilum (General Justice Agency) No. 1691 of 2020, the Supreme Court regulates the application of the restorative justice approach to several criminal offenses in court. The offenses concerned are minor crimes, women's conflict with the law, children's cases, and narcotics cases. Restorative justice can be performed peacefully by the victim and the perpetrator, as well as the victim's family and community leaders. The judge seeks peace at the beginning and during the trial, prioritizing the principles of restorative justice in making decisions. After a resolution is achieved, the judge includes peace in their decision.²⁴

In the taxation field, the May 2021 edition of the APBN KITA document states that

the restorative justice approach is applied in two ways. First, the disclosure of untruthful acts based on Article 8 paragraph (3) of the Taxation Provisions Law (KUP Law) as last amended by the Job Creation Law (Ciptaker Law). The second is the request to revoke the investigation by replacing the loss of state revenue and fines (Article 44B of the General Provisions and Tax Procedures Law, as amended by the Job Creation Law).

Appropriate to the description above, the importance of applying restorative justice in customs and excise law enforcement can be stated as follows:

- a. Punishment with imprisonment or confinement may not deter criminal offenders.
- b. The process of investigation up to imprisonment is wasteful or inefficient.
- c. Punishment through fines in customs and excise cases often fails to recover losses to state revenue. The option of fines or imprisonment triggers criminal offenders to subsidize and prefer to serve imprisonment rather than pay off their debts.
- d. As a revenue collector, the Directorate General of Customs, in enforcing customs and excise laws, ideally focuses more on establishing various revenue sources for the state treasury. The Ultimate Remedium principle applies in customs and excise law enforcement.
- e. A new development in law enforcement in the criminal justice system in Indonesia is that the police, prosecutors, courts, and even the Directorate General of Taxes have implemented restorative justice in resolving certain cases.

The implementation of restorative justice in the customs and excise can be seen in the applicable laws and regulations. Customs are related to the supervision of the goods traffic entering or leaving the customs area and collecting import and export duties. Meanwhile, the positive law that regulates Indonesian Customs is Law Number 10 of

²² Sari, TN, Sudarti, E., & Monita, Y. (2021). 'Execution of Court Decisions by Prosecutors Against the Criminal Payment of Compensation for Corruption Crimes at the Muaro Jambi District Prosecutor's Office,' *PAMPAS: Journal of Criminal Law*, 2(2), 54-67.
<https://doi.org/doi.org/10.22437/pampas.v2i2.13716>

²³ Chief of Police Circular No. 8. (2018). *Application of Restorative Justice in settlement of Criminal Cases*.

²⁴ Bagman Roy Manalu, 'Implementation of Restorative Justice in Customs and Excise Law Enforcement,' *Indonesian Journal of Social Science*, 3.5 (2022), 793-809 <<https://doi.org/10.36418/jiss.v3i5.581>>.

1995 concerning Customs as amended by Law Number 17 of 2006.

Excise is a state-managed tax levy imposed on certain goods whose nature and characteristics are regulated in the Excise Law. It is governed by Law Number 11 of 1995 on Excise as amended by Law Number 39 of 2007 (Excise Law) and last amended by Article 14 of Law Number 7 of 2021 on the Harmonization of Tax Regulations.

The criminal provisions in the Customs Law are regulated in Articles 102, 102A, 102B, 102C, 102D, 103, 103A, 104, 105, 107, 108, 109, 110, and 111. Article 112 (1) of the Customs Law stipulates that certain officials of the Directorate General of Customs have special authority as Investigators. The Investigator, as referred to in Law Number 8 of 1981 concerning the Criminal Procedure Law, investigates criminal offenses in customs.

Meanwhile, Article 113 paragraph (1) of the Customs Law specifies that the Finance Minister may request the Attorney General to stop the investigation of criminal offenses in the field of Customs in the interest of State revenue. This implies the Attorney General may terminate the investigation of criminal offenses at the request of the Finance Minister. Termination can only occur after the violator or perpetrator of the criminal offense pays the import duty owed with an administrative sanction in the form of a fine of four times the total unpaid import duty. This is regulated in Article 113 (2) of the Customs Law.

Article 113, paragraphs (1) and (2) of the Customs Law can be interpreted as applying the *ultimum remedium* principle, where punishments or criminal sanctions are an alternative or last resort to enforce the Indonesian customs law. The *ultimum remedium* principle is considered a manifestation of restorative justice in Indonesian customs law, where the recovery of state losses is prioritized. However, the implementing regula-

tions of Article 113, paragraphs (1) and (2) of the Customs Law have not been enacted. The absence prevents the implementation of restorative justice in customs law enforcement.

The Excise Law regulates criminal provisions in Articles 50, 52, 53, 54, 55, 56, 57, 58, 58A, 59, 60, 61, and 62. In the Excise Law, the investigation of excise crime is only terminated following criminal offenses, as referred to in Articles 50, 52, 54, 56, and 58. Article 63 paragraph (1) of the Excise Law confers special authority on certain officials of the Directorate General of Customs and Excise as Investigators. The Investigator, as referred to in Law Number 8 of 1981 concerning Criminal Procedure, shall investigate criminal offenses in the field of excise.

The article regulating the termination of the investigation instructs that the Attorney General may suspend the investigation of criminal acts at the request of the Minister in the interest of state revenue. This is as stipulated in Article 64 (1) of the Excise Law amended by the Harmonization of Tax Regulations Law and lasts for a maximum of six months from the date of the request letter. Article 64, paragraph (2) further states that the termination of investigation for the benefit of state revenue only concerns criminal offenses referred to in Articles 50, 52, 54, 56, and 58. The perpetrator of the excise crime will be required to pay an administrative sanction comprising a fine of four times the value of the unpaid excise. The administration of such sanctions is considered sufficient to serve as a deterrent and a form of balance between restorative justice and financial recovery.

Article 64, paragraph (3) also permits the payment of administrative sanctions even after an excise criminal case has been submitted to the court.

Furthermore, Article 64, paragraph (4) states that the payment of administrative sanctions through fines for the termination

of investigation is a consideration for the Public Prosecutor to prepare an indictment without imposition. Administrative sanctions or fines paid by the defendant are considered reparation of the judge's verdict. Based on Article 64, paragraph (5), the unpaid balance of the actual fee after payment by the suspect or defendant at the investigation stage can be calculated as a criminal fine imposed on the defendant. Then, the shortfall of the payment will be charged to the defendant.

According to Article 64, paragraph (6) regulating the investigation of excise crimes, excisable goods related to the termination of criminal investigations are designated as State property. Other forms of goods involved in the criminal offense may be confiscated by the Civil Servant Investigator of the Directorate General of Customs. These include means of transportation, communication equipment, media or storage, as well as documents and letters, which may be determined to be State property, as stipulated in Article 64 paragraph (7).

Article 14 of the Harmonization of Tax Regulations Law also regulates the delegation of authority related to terminating an investigation. The formulation of Article 64 paragraph (8) states that the Finance Minister and the Attorney General may delegate further authority to designated officials regarding the request to terminate criminal investigations in the field of excise. The termination request may be delegated by the Finance Minister to the Director General of Customs and Excise or the Attorney General to the Deputy Attorney General for Special Crimes. Article 64 paragraph (9) of the Excise Tax Law states that further provisions regarding the termination of investigation shall be regulated by or based on Government Regulations.

Additionally, Article 14 of the Harmonization of Tax Regulations Law inserted Article 40B between Article 40A and 41 of the Excise Law. Article 40B regulates the research of

alleged excise violations. Paragraph (1) states that Customs and Excise Officers can research alleged violations in the field of excise. This can be performed by collecting materials and information to determine the existence of an administrative or criminal violation in the field of excise.

An alleged administrative violation shall be resolved administratively, appropriate to the provisions of Article 40B paragraph (2). Supposing the results showed a criminal violation of Articles 50, 52, 54, 56, or 58, and the person concerned paid an administrative fine of three times the unpaid excise value, the alleged violation may not be investigated as stipulated in Article 40B paragraph (3). Since the article intends to settle criminal offenses without investigation, the approach to law enforcement for excise crimes is restorative justice by prioritizing the restoration of the rights or conditions of victims. In excise crimes, the state is the victim because of the loss of its entitled revenue.

Meanwhile, Article 40B paragraph (4) designates uninvestigated excisable goods as state property. These include means of transportation, communication, media, or storage equipment, as well as documents and letters.

The finance minister controls the implementing regulations regarding alleged, uninvestigated violations. This is contained in Article 40B paragraph (6), which states that Ministerial Regulation governs further provisions regarding alleged violations that are not investigated. Article 14 of the Harmonization of Tax Regulations Law, which amended Article 64 and Article 40 B of the Excise Law, implements excise criminal law enforcement by prioritizing the recovery of state revenue losses. This is executed with the implementation of restorative justice in Indonesian excise law, where the recovery of losses by the state as the victim is prioritized. Obligatory Payers, referring to violators of criminal law, are allowed to restore state revenue losses by paying sanctions. There-

fore, Article 14 of the Harmonization of Tax Regulations Law is in line with the application of the ultimum remedium principle, where punishments or criminal sanctions are an alternative or last resort in enforcing the excise law in Indonesia.

Article 64 of the Excise Law, as amended by Article 14 of the Harmonization of Tax Regulations Law, provides an opportunity for the Payer, during the investigation process, to pay a fine of four times the unpaid excise value. Furthermore, Article 40B of the Excise Law, as amended by Article 14 of the Harmonization of Tax Regulations Law, allows the payment of a fine of three times the unpaid excise value during the research or investigation process.

Conclusion

The concept of restorative justice is not only applicable to the Supreme Court but can be infused into the general criminal justice process, particularly in Indonesia. Some processes should be passed for justice seekers, such as investigation, prosecution, examination, the imposition of a judge's decision, as well as ordinary and extraordinary legal remedies or efforts made by justice seekers.

Penal efforts are the most common method employed by law enforcement officials. They are more focused on eradicating the occurrence of crimes using criminal law and criminal sanctions, which threaten the perpetrators. Preliminary and further investigation, prosecution, and other activities are part of criminal politics. The functionalization of penal punishment is an effort to overcome crime through the rational enforcement of criminal law to fulfill a sense of justice and effectiveness.

Meanwhile, the Attorney General's Office terminated prosecution and adopted the principles of restorative justice. The Regulation of the Indonesia Attorney General's Office Number 15 of 2020 states that cases with

certain conditions are terminated after performing an out-of-court settlement using a restorative justice approach.

Additionally, Article 64 of the Excise Law, as amended by Article 14 of the Harmonization of Tax Regulations Law, allows the Payer to submit a fine of four times the unpaid excise value during the investigation process. Also, Article 40B of the Excise Law, as amended by Article 14 of the Harmonization of Tax Regulations Law, provides an opportunity for the payment of a fine of three times the unpaid excise value during the research or investigation process.

Bibliography

Journals

- Analysis, A., Pid, N., & Pn, S. U. S, 'Juridical View of The Implementation Of Sanction Against Illicit Cigarette Trade.', 14(3).3 (2022), 413-431
<<https://doi.org/10.29123/jy.v14i3.477>>
- Arief, Hanafi, and Ningrum Ambarsari, 'Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia', *Al-Adl : Jurnal Hukum*, 10.2 (2018), 173
<<https://doi.org/10.31602/al-adl.v10i2.1362>>
- Budoyo, Sapto, and Ratna Kumala Sari, 'Eksistensi Restorative Justice Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Anak Di Indonesia', *Jurnal Meta Yuridis*, 2.1 (2019), 79-90
<<https://doi.org/10.26877/m-y.v2i2.4689>>
- Cahyo, Rico Nur, Irma Cahyaningtyas, Studi Magister, Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, and others, 'Kebijakan Hukum Pidana Tentang Diversi Terhadap Anak Pelaku Recidive Guna Mencapai Restorative Justice', *Pembangunan Hukum Indonesia*, 3 (2021), 213-16
- Flora, Henny Said, 'UBELAJ, Volume 3

- Number 2, October 2018 | 142', 3.2 (2018), 142-58
- Hambali, Azwad Rachmat, 'Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana', *Kalabbirang Law Journal*, 2.1 (2020), 69-77
<<https://doi.org/10.35877/454ri.kalabbirang36>>
- Mahendra, Adam Prima, 'Mediasi Penal Pada Tahap Penyidikan Berlandaskan Keadilan Restoratif', *Jurist-Diction*, 3.4 (2020), 1153
<<https://doi.org/10.20473/jd.v3i4.20200>>
- Manalu, Bagman Roy, 'Implementasi Keadilan Restoratif Dalam Penegakan Hukum Kepabeanaan Dan Cukai', *Jurnal Indonesia Sosial Sains*, 3.5 (2022), 793-809
<<https://doi.org/10.36418/jiss.v3i5.581>>
- Putra, Septian Yudiantara. dkk, 'Penegakan Hukum Atas Tindak Pidana Cukai Rokok Menurut Undang-Undang Nomor 39 Tahun 2007', 11, 2017
- Rahmawati, Cristina Natalia, 'Tindak Pidana Penjualan Rokok Tanpa Pelekatan Pita Cukai (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Sigli) Criminal Action Of Sales Cigarette Without Attaching Excise Tape (A Research In The Jurisdiction Of The Sigli State Court) Pendahuluan ', 5.2 (2021), 343-51
- Syahputra, Irwandi, Elwi Danil, Oksep Adhayanto, and Ayu Efridadewi, 'Penegakan Hukum Tindak Pidana Cukai Di Perbatasan Kawasan Perdagangan Dan Pelabuhan Bebas Bintan', *Jurnal Selat*, 8.1 (2020), 89-107
<<https://doi.org/10.31629/selat.v8i1.2747>>
- Suzuki, Masahiro, and Xiaoyu Yuan. "How Does Restorative Justice Work? A Qualitative Metasynthesis." *Criminal Justice and Behavior* 48, no. 10 (2021): 1347-65.
<https://doi.org/10.1177/0093854821994622>.
- Effendy, Samuel Dwioktorianto. "Why Christian Schools Should Adopt Restorative Justice?" *Diligentia: Journal of Theology and Christian Education* 2, no. 1 (2020): 31.
<https://doi.org/10.19166/dil.v2i1.2121>.
- E Kazić, R Ćorović, "Restorative Justice Within Legal System of Bosnia and Herzegovina", *padovauniversitypres.it UPADO* 2019
- Woźniak, Zenon, Mariusz Kuliński, and Wojciech Jakubiec. "The Role of the Border Guard in Combating Economic Crime." *Scientific Journal of Bielsko-Biala School of Finance and Law* 26.2 (2022):44-48.
<https://doi.org/10.19192/wsfp.sj2.2022.7>
- PRADIPTA, Dhea Junesty; PRADNYANA, I. Nyoman Prama; RAHARJO, Teguh. The New Normal Strategy for Project Management in Directorate General of Customs and Excise. In: *2020 3rd International Conference on Computer and Informatics Engineering (IC2IE)*. IEEE, 2020. P. 249-254.
[10.1109/IC2IE50715.2020.9274568](https://doi.org/10.1109/IC2IE50715.2020.9274568)

Books

- Bazemore, Gordon and Schiff Mara. 2005. *Juvenile Justice Reform and Restorative justice building Theory and Policy from Practice*. Willan Publishing, Oregon
- Emirzon, Joni. 2001. *Alternatif Penyelesaian Sengketa di Luar Pengadilan*. PT Gramedia Pustaka Utama, Jakarta
- Hamzah, Andi. 1994. *Asas-Asas Hukum Pidana*. PT. Rineka Cipta, Jakarta, Edisi Revisi
- Hartanti, Evi. 2012. *Tindak Pidana Korupsi*. Sinar Grafika, Jakarta, Edisi Kedua
- Herlina, Apong dkk. 2004. *Perlindungan Terhadap Anak Yang Berhadapan Dengan*

Hukum. PT. Raja Grafindo Persada. Jakarta

Rahardjo, Satjipto. 2003. *Sisi-Sisi Lain dari Hukum di Indonesia*. Kompas, Jakarta

Rosidah, Nikmah. 2014. *Budaya Hukum Hakim Anak di Indonesia*, Pustaka Magister, Semarang

Rizky, Rudi (ed). 2008. *Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir)*. Perum Percetakan Negara Indonesia, Jakarta

Soekanto, Soerjono. 2008. *Pengantar Penelitian Hukum*. Universitas Indonesia Press, Jakarta